

is considered not specific if a reasonable person familiar with the discharge review process after a review of the materials considered cannot determine the relationship between the applicant's submission and the particular circumstances of the case. This response may be used only if the submission is expressed in such general terms that no other response is applicable. For example, if the NDRB disagrees with the applicant as to the relevance of matters set forth in the submission, the NDRB normally will set forth the nature of the disagreement with respect to decisional issues, or it will reject the applicant's position. If the applicant's submission is so general that none of those provisions is applicable, then the NDRB may state that it cannot respond because the item is not specific.

§ 724.806 Decisional issues.

(a) *General.* Under the guidance in this section, the decisional document shall discuss the issues that provide a basis for the decision whether there should be a change in the character of or reason for discharge. In order to enhance clarity, the NDRB should not address matters other than issues relied upon in the decision or raised by the applicant.

(1) *Partial change.* When the decision changes a discharge, but does not provide the applicant with the full change in discharge requested, the decisional document shall address both the issues upon which change is granted and the issues upon which the NDRB denies the full change requested.

(2) *Relationship of issue of character of or reason for discharge.* Generally, the decisional document should specify whether a decisional issue applies to the character of or reason for discharge (or both), but it is not required to do so.

(3) *Relationship of an issue to propriety or equity.* (i) If an applicant identifies an issue as pertaining to both propriety and equity, the NDRB will consider it under both standards.

(ii) If an applicant identifies an issue as pertaining to the propriety of the discharge (for example, by citing a propriety standard or otherwise claiming that a change in discharge is required

as a matter of law), the NDRB shall consider the issue solely as a matter of propriety. Except as provided in § 724.806(a)(3)(d), the NDRB is not required to consider such an issue under the equity standards.

(iii) If the applicant's issue contends that the NDRB is required as a matter of law to follow a prior decision by setting forth an issue of propriety from the prior decision and describing its relationship to the applicant's case, the issue shall be considered under the propriety standards and addressed under § 724.806 (a) or (b).

(iv) If the applicant's issue sets forth principles of equity contained in a prior NDRB decision, describes the relationship to the applicant's case, and contends that the NDRB is required as a matter of law to follow the prior case, the decisional document shall note that the NDRB is not bound by its discretionary decisions in prior cases. However, the principles cited by the applicant, and the description of the relationship of the principles to the applicant's case, shall be considered and addressed under the equity standards.

(v) If the applicant's issue cannot be identified as a matter of propriety or equity, the NDRB shall address it as an issue of equity.

(b) *Change of discharge: issues of propriety.* If a change in the discharge is warranted under the propriety standards, the decisional document shall state that conclusion and list the errors of expressly retroactive changes in policy or violations of regulations that provide a basis for the conclusion. The decisional document shall cite the facts in the record that demonstrate the relevance of the error or change in policy to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not granting the full change shall be set forth.

(c) *Denial of the full change requested: issues of propriety.* (1) If the decision rejects the applicant's position on an issue of propriety, or if it is otherwise decided on the basis of an issue of propriety that the full change in discharge requested by the applicant is not warranted, the decisional document shall note that conclusion.